

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

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In re: PROMESA  
TITLE III  
THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO, Case No. 17-BK-3283-LTS  
as representative of (Jointly Administered)  
THE COMMONWEALTH OF PUERTO RICO *et al.*,  
Debtors.<sup>1</sup>  
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**STATUS REPORT OF THE AVOIDANCE ACTIONS TRUSTEE  
IN CONNECTION WITH THE COURT’S AVOIDANCE ACTION PROCEDURES**

Drivetrain, LLC (“Trustee”), in its capacity as the trustee of the Commonwealth Avoidance Actions Trust, respectfully submits this timely status report (“Status Report”) in compliance with Part III of the Court’s Avoidance Action Procedures [DE No. 20937, Appendix 2] (“Procedures”) and respectfully states as follows:

**STATUS REPORT**

1. Pursuant to the Court’s Procedures, the Trustee respectfully submits the attached **Exhibit A** (“Case Update”), which provides a “brief update on the status of each Avoidance

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK- 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK- 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Action, including (as to each such action that remains pending at such time) whether the parties are engaging in informal settlement discussions, the schedule established for mediation, and whether the Trustee expects the Avoidance Action to be litigated.” [Procedures, DE No. 20937, Appendix 2, Pt. III, § (i)].

2. As part of the Status Report, the Trustee summarizes certain data points contained within the attached Case Update.

3. **First**, the Trustee has communicated more than once with each defendant to establish dates for a pre-trial mediation. **Second**, the Trustee has established a roster of highly regarded and respected mediators from which the parties may select. The Trustee has also considered other mediators in those few instances in which a defendant has suggested a mediator who was not represented on the Trustee’s roster.

4. **Third**, the Trustee is pleased to report that it has made substantial progress in scheduling mediations and engaging with counsel for the defendants in the Avoidance Actions, many of which counsel have been responsive.

5. The Court may consider the following information to be relevant in reviewing the Case Update:

- a. There are fifty-one (51) Avoidance Actions that are subject of the Court’s Procedures.<sup>2</sup>
- b. The Trustee has sent each of the defendants in the Avoidance Actions an invitation to mediate.

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<sup>2</sup> The Trustee notes that the Procedures apply to a smaller universe of avoidance actions than the universe transferred to the Trust pursuant to the Plan because the Plan included cases where: the Court has entered a default judgment against a defendant (*e.g.*, Adv. Proc. Nos. 19-00268, 19-00122, 19-00129, 19-00222, 19-00249, 19-00098, 19-00200, 19-00187); a defendant had filed for bankruptcy relief; or procedures were not suitable.

- c. In each invitation to mediate, the Trustee solicited dates for mediation, provided the curriculum vitae for the roster of mediators, indicated that the Trustee would provide its detailed, written position regarding the pending claims in advance of mediation (“Position Papers”), and expressed an openness to narrow issues before mediation.
- d. The Position Papers are the result of a factual and legal analysis of the issues related to each individual claim, including consideration of any defenses raised by the defendant or tolled party. The Trustee has now submitted twenty-two (22) Position Papers to the defendants and will submit Position Papers to each defendant in advance of mediation as those mediations are scheduled.
- e. The Trustee has already completed mediation with seven (7) defendants.
- f. The Trustee has scheduled an additional fifteen (15) mediations to occur. Due to scheduling, some Defendants have requested mediation in the first quarter of 2023.
- g. The Trustee has tentatively scheduled mediations (or is in the process of re-scheduling previously-scheduled mediations) in nine (9) of the Avoidance Actions.
- h. The Trustee has engaged in several informal communications with twelve (12) defendants and hopes to schedule mediation with them in the near term.
- i. The Trustee reports that only six (6) defendants have failed to respond to the Trustee’s invitation to mediate, despite repeated communications.

The Trustee will nonetheless endeavor to schedule mediation with such defendants notwithstanding the unresponsiveness to date.

- j. The Trustee has filed a notice of dismissal in one Avoidance Action in light of a fully performed settlement.
- k. The Trustee has reached a settlement in principle with one Avoidance Action defendant following mediation and is in the process of documenting that settlement.

6. In addition to the Avoidance Actions Defendants, the Trustee has used the opportunity to engage with parties subject to tolling agreements (“Tolled Parties”) even though they are not subject to the Court’s Order implementing the Procedures. In those instances, the Trustee has invited the Tolled Parties to mediation, using the exact same process as for the Avoidance Action defendants, although acknowledging that participation is voluntary.

7. Mindful of the confidentiality imposed by the tolling agreements, the Trustee can report the following:

- a. The Trustee has invited 100 per cent (100%) of the Tolled Parties to mediation.
- b. Seventy-seven per cent (78%) of the Tolled Parties have agreed to mediation.
- c. Thirty percent (28%) of the Tolled Parties have already scheduled mediation.
- d. Twenty-seven percent (50%) of the Tolled Parties are in the process of scheduling mediation.
- e. Thirty-three percent (33%) of the Tolled Parties have received a Position Paper from the Trustee.
- f. Only seventeen (17%) of the Tolled Parties have failed to respond to the Trustee’s invitation to mediate, despite repeated communications.

8. The Trustee appreciates the efforts of the defendants and their counsel who have been responsive throughout this process.

Dated this 20<sup>th</sup> day of September 2022

Respectfully submitted by:

/s/ John Arrastia

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### **CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on September 20, 2022, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all appearing parties in the captioned proceeding.

/s/ John Arrastia

John Arrastia, Esq.